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6 ATTORNEYS FOR DEFENDANT TELEPATH CORPORATION  
7  
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9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 In Re:  
13 TELEPATH CORPORATION  
14 Debtor.

Case No. BK-03-56788 ASW

Chapter 11

EX PARTE APPLICATION TO REOPEN  
BANKRUPTCY CASE PURSUANT TO 11  
U.S.C. § 350(B) AND BANKRUPTCY RULE  
5010; AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF

18  
19 In connection with its Notice of Removal, filed concurrently herewith, Debtor TelePath  
20 Corporation ("TelePath") hereby applies ex parte for an order reopening the above-captioned  
21 bankruptcy case to allow the administration of an adversary proceeding relating to Chapter 11  
22 counsel's state court complaint for pre- and post-confirmation attorney fees.

23 I. BACKGROUND

24 On October 4, 2003, TelePath filed a voluntary petition for relief under Chapter 11 of the  
25 Bankruptcy Code. On November 3, 2003, this Court entered an order granting TelePath's motion to  
26 employ the Logan Law Firm as its bankruptcy counsel. (Docket No. 36.) On September 12, 2008,  
27 the owner of the Logan Law Firm, and TelePath's primary bankruptcy lawyer passed away. (Docket  
28 No. 355.)

1 On November 12, 2008, CGS executed an Attorney-Fee Contract, stating that Telepath was  
2 hiring CGS to “provide those legal services in connection with prosecuting its pending Chapter 11  
3 reorganization case in the United States Bankruptcy Court.” The agreement further provided that  
4 CGS would “represent [TelePath] in the ordinary and usual matters in the bankruptcy court  
5 associated with a case under the Bankruptcy Code, but not to include any contested matter or  
6 adversary proceeding without further written agreement.” (Docket No. 355, Ex. A.)

7 At a December 11, 2008 hearing, this Court orally approved the employment of CGS as  
8 counsel for TelePath. On January 5, 2009, this Court entered an order confirming CGS’s  
9 employment as counsel for TelePath. (Docket No. 365.)

10 TelePath subsequently filed an Amended Disclosure Statement on Plan of Reorganization.  
11 (Docket No. 378.) Therein, CGS was named as a creditor with an “unspecified administrative  
12 claim.” (*Id.* at p. 7.) The Reorganization Plan itself specifies the “treatment” of such claims.  
13 (Docket No. 367.) In addition, the Disclosure Statement states that “[f]ees owed to said law firm can  
14 only be paid after Court approval, and said law firm will accept payments over time if necessary.”  
15 (*Ibid.*)

16 On March 30, 2009, this Court entered an Order confirming the above-referenced  
17 Reorganization Plan. This Order provided, inter alia, that “[a]ll payments made or promised by  
18 Debtor under the Plan or *for services or for costs and expenses in, or in connection with, the Plan*  
19 *and incident to the case*, have been fully disclosed to the Court and are reasonable, *or, if to be fixed*  
20 *after confirmation of the Plan, will be subject to the approval of the Court.*” (Docket No. 397.)

21 Four days later, CGS filed a Final Application for Compensation and Reimbursement of  
22 Expenses By Attorney For Debtor. (Docket No. 402.) On August 3, 2009, the Logan Law Firm also  
23 filed a Final Application for Compensation and Reimbursement of Expenses By Attorney For  
24 Debtor, requesting \$164,347 in fees and \$14,342 in expenses.. (Docket No. 419.) On information  
25 and belief, CGS advised TelePath to object to the Logan Law Firm’s application. Litigation  
26 surrounding the Logan firm’s fees dragged on for almost two years.

27 On March 11, 2011, this Court issued a Memorandum Decision on Logan Law Firm Final  
28 Fee Application, granting the Logan Law Firm \$157,080 in fees and \$14,342 in costs. (Docket No.

1 487.) At the same time, the Court issued a Memorandum Decision on CGS's Final Fee Application,  
2 awarding CGS \$38,060 in fees and \$584.49 in costs for its fees through April of 2009. (Docket No.  
3 486.) CGS never made another fee application.

4 A lack of communication between TelePath and CGS ensued after the Logan Law Firm  
5 fiasco; ultimately resulting in two motions for contempt and the U.S. Trustee seeking to dismiss  
6 TelePath's bankruptcy. As a result, TelePath terminated its relationship with CGS in April of 2011  
7 and substituted Berliner Cohen as its counsel to resolve the motions and close the bankruptcy case.  
8 (Docket No. 522.)

9 A Final Decree was issued on March 29, 2013. (Docket No. 549.) Though CGS was  
10 notified by counsel of TelePath's intent to close the bankruptcy case, it made no request for approval  
11 of any post-confirmation services.

12 Instead, on March 20, 2014, CGS filed a complaint (the "Complaint") in the Superior Court  
13 of California, Santa Clara County, Case No. 114CV262437 (the "Civil Action"), attached hereto as  
14 Exhibit "A." A Notice of Removal has been filed, and this Motion seeks to reopen the Bankruptcy  
15 Case so CGS' claims may be administered in the Court in which its services were rendered.

16 The causes of action alleged in the Complaint originate from the legal services CGS provided  
17 to TelePath in connection with bankruptcy proceeding. Specifically, Plaintiff alleges that it did not  
18 receive \$91,358.96 in payment for their legal fees pursuant to the parties' November 12, 2008  
19 Attorney-Client Fee Contract, this Court's Memorandum Decision on Campeau Goodsell Smith  
20 Final Fee Application (Docket # 486), and Telepath's Confirmed Chapter 11 Plan (Docket #397).  
21 The alleged failure to pay the legal fees is the basis for Plaintiff's causes of action for breach of  
22 contract, account stated, open book account, and money had and received.

23 TelePath has never authorized CGS to perform any work outside the scope of the bankruptcy  
24 proceedings. TelePath is unaware of any written agreement with CGS apart from the November 12,  
25 2008 agreement, which specifies that CGS was hired solely to perform legal services in connection  
26 with TelePath's bankruptcy proceeding.

1     II.     DISCUSSION

2             The Bankruptcy Code (11 U.S.C. § 101 et seq.) provides that a bankruptcy case “may be  
3     reopened in the court in which the case was closed to administer assets, to accord relief to the debtor,  
4     or for other cause.” The Bankruptcy Code does not define “other cause,” thus whether sufficient  
5     “causes exists to reopen is left to the broad discretion of the bankruptcy court, which may consider  
6     numerous factors including equitable concerns, and ought to emphasize substance over form.” (*In re*  
7     *Emmerling*, 223 BR 860, 864 (2nd Cir. BAP 1997); see *Matter of Bianucci*, 4 F.3d 967, 972 (9th Cir.  
8     2002); *In re Ashe* 228 BR 457, 461 (CD CA 1998).)

9             Here, the bankruptcy proceeding should be re-opened for several reasons. First, CGS is  
10    suing for attorney fees that were incurred solely during pre-confirmation and post-confirmation  
11    bankruptcy work on behalf of TelePath over which this Court has jurisdiction. See *In re Sultan*  
12    *Corp.*, 81 B.R. 599, 601-02 (9th Cir. BAP 1987) (chapter 11 approval of post-confirmation legal  
13    fees); *In re Tri-L Corp.*, 65 B.R. 774, 777 (Bankr. D. Ut. 1986) (chapter 11 post-confirmation legal  
14    fees governed by §503(b)(2) and jurisdiction for approval reserved); see also *In re Berg & Assoc.*,  
15    *Inc.*, 138 B.R. 782, 785 (Bankr. E.D.Pa. 1992); *In re Hays Builders, Inc.*, 99 B.R. 848 (Bankr. W.D.  
16    Tenn. 1989).

17            Second, the bankruptcy court may expressly retain jurisdiction over a reorganization plan  
18    during its consummation under a provision of the plan itself or the confirmation order. See *In re*  
19    *Johns-Manville Corp.*, 7 F.3d 32, 34 (2nd Cir. 1993) (bankruptcy court retains post-confirmation  
20    jurisdiction in chapter 11 proceeding to extent provided in plan of reorganization); *In re Neptune*  
21    *World Wide Moving, Inc.*, 111 B.R. 457, 462 (Bankr. S.D.N.Y. 1990) (bankruptcy court retains post-  
22    confirmation jurisdiction under chapter 11 plan in accordance with terms of the plan and  
23    confirmation order); see also *In re Aylesbury Inn, Inc.*, 121 B.R. 675, 677 (Bankr. N.D.N.Y. 1990);  
24    *In re Tri-L Corp.*, *supra*; *In re Hays Builders, Inc.*, *supra*.; see also *Collier on Bankruptcy*, 1142.04.

25            In this case, the Confirmed Chapter 11 Plan specifically reserves for this Court “jurisdiction  
26    for [] determination of requests for payments of administrative expenses, including compensation of  
27    professional persons for services rendered both before and after the Effective Date” as well as  
28    “enforcement and implementation of the provisions of this Plan and entry of orders in aid of

1 consummation of this Plan . . . notwithstanding entry of a Final Decree.” Furthermore, the Order  
2 Confirming Debtor’s Plan of Reorganization states that “[a]ll payments made or promised by Debtor  
3 under the Plan or *for services or for costs and expenses in, or in connection with, the Plan and*  
4 *incident to the case*, have been fully disclosed to the Court and are reasonable, or, *if to be fixed after*  
5 *confirmation of the Plan, will be subject to the approval of the Court.*”

6 Moreover, CGS is specifically suing to enforce this Court’s Memorandum Decision on  
7 CGS’s Final Fee Application and Telepath’s Confirmed Chapter 11 Plan. (See Complaint attached  
8 hereto as Exhibit “A,” at ¶ 8) Indeed, CGS is listed as a creditor with an “unclassified administrative  
9 claim” under TelePath’s Revised Disclosure Statement, and TelePath’s Confirmed Chapter 11 Plan  
10 specifies the “treatment” of such claims. (See *In re Crown Vantage, Inc.*, 421 F.3d 963, 972 (9th  
11 Cir. 2005) [actions to enforce a Plan of Reorganization is a core proceeding of the bankruptcy court];  
12 see also *McCowan v Fraley (In re McCowan)* 296 BR 1 (2003, BAP9) (proceeding to enforce  
13 bankruptcy judgment or execute on it continued to be a matter that arose under the Bankruptcy Code  
14 until it was satisfied).)

15 In addition, numerous courts have held that a motion to reopen a closed bankruptcy case  
16 should be granted in order to determine whether a debtor can obtain additional relief. (See e.g., *In re*  
17 *dodge* 138 BR 602, 605 (BC ED CA 1992) [motion to reopen a closed bankruptcy case so that a  
18 debtor can obtain additional relief “should be routinely granted”]; *In re Venuto* 343 BR 120, 124 (BC  
19 ED PA 2006).) As set forth above, CGS did not apply to this Court for payment of the fees allegedly  
20 owed before the bankruptcy case closed, and its failure to do so may relieve TelePath from any  
21 obligation to pay.

22 Finally, this Court should adjudicate CGS’s claim for attorney fees for equitable reasons and  
23 purposes of judicial economy. This Court issued the orders at issue in the Complaint and personally  
24 observed the services that allegedly gave rise to these fees. (See *In re Apex Oil Co., Inc.* 406 F.3d  
25 538, 542 (8th Cir. 2005) (the decision to reopen a bankruptcy case should be based “on the particular  
26 circumstances and equities of each particular case).) Indeed, since the legal services were incurred  
27 in “connection with” the Plan and “incident to” the bankruptcy case, this Court should have  
28 approved all of the claimed fees in the first instance pursuant to the plain language of the Plan. (See

1 e.g., *Weaver v Tex. Capital Bank, N.A.*, 410 BR 453 (2009, ND Tex) (because the allegations and  
2 relief sought in complaint required interpretation of confirmed plan of reorganization in debtor's  
3 bankruptcy, the bankruptcy court had exclusive jurisdiction under the case).)

4 III. CONCLUSION

5 For all the reasons set forth above, TelePath respectfully requests that the above-  
6 captioned bankruptcy be re-opened to administer an Adversary Proceeding relating to the  
7 Complaint filed in state court by Chapter 11 counsel, Campeau Goodsell Smith, L.C. for fees  
8 allegedly incurred during the pendency of the Chapter 11 case.

9  
10 DATED: APRIL 21, 2014

BERLINER COHEN

11  
12 BY: /s/ Laura Palazzolo

LAURA PALAZZOLO

SARA L. POLLOCK

ATTORNEYS FOR DEFENDANT TELEPATH CORP.

PROOF OF SERVICE

I, Sabina Hall, declare under penalty of perjury under the laws of the United States that the following facts are true and correct:

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, and my business address is Ten Almaden Boulevard, Eleventh Floor, San Jose, California 95113-2233. On April 21, 2014, I served the following document(s):

EX PARTE APPLICATION TO REOPEN BANKRUTPCY CASE PURSUANT TO 11 U.S.C. §350(B) AND BANKRUPTCY RULE 5010; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THERETO;

PROPOSED ORDER APPROVING APPLICATION TO RE-OPEN BANKRUPTCY CASE

in the following manner:

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, from the sending facsimile machine telephone number of \_\_\_\_\_. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.

☐ by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

William J. Healy  
Campeau Goodsell Smith, L.C.  
440 N. 1st Street, Suite 100  
San Jose, CA 95112

Nanette Dumas, Ch. 13 Trustee  
P.O. Box 50013  
San Jose, CA 95150-0013

Office of the U.S. Trustee  
U.S. Federal Bldg.  
280 S 1st St. #268  
San Jose, CA 95113-3004

# EXHIBIT A

1 I am readily familiar with my firm's practice for collection and processing of  
2 correspondence for mailing with the United States Postal Service/Express Mail, Federal Express  
3 and other overnight mail services, to wit, that correspondence will be deposited with the United  
4 States Postal Service/overnight mail service this same day in the ordinary course of business.

5 Executed on April 21, 2014, at San Jose, California.

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/s/ Sabina Hall

SABINA HALL

1 CAMPEAU GOODSSELL SMITH, L.C.  
2 WILLIAM J. HEALY, #146158  
3 440 N. 1<sup>st</sup> Street, Suite 100  
4 San Jose, California 95112  
5 Telephone: (408) 295-9555  
6 Facsimile: (408) 295-6606

7 ATTORNEYS FOR  
8 CAMPEAU GOODSSELL SMITH, L.C.

(ENDORSED)  
FILED

2014 MAR 20 P 1:07 S. Smith  
David H. Yarnall, Clerk of the Superior Court  
County of Santa Clara, California  
by \_\_\_\_\_ Deputy Clerk

9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SANTA CLARA  
12 UNLIMITED JURISDICTION  
13

14 CAMPEAU GOODSSELL SMITH, L.C., a  
15 law corporation,

16 Plaintiff,

17 vs.

18 TELEPATH CORPORATION; and DOES  
19 1 through 20,

20 Defendants.

Case No.

114CV262437

COMPLAINT FOR BREACH OF  
CONTRACT; ACCOUNT STATED;  
OPEN BOOK ACCOUNT; MONEY HAD  
AND RECEIVED; AND QUANTUM  
MERIT

21 Plaintiff CAMPEAU GOODSSELL SMITH, L.C. for itself (hereinafter "Plaintiff" and/or  
22 "CGS") alleges as follows:

23 I. PARTIES

24 1. Plaintiff CAMPEAU GOODSSELL SMITH, L.C. for itself (hereinafter "Plaintiff"  
25 and/or "CGS") is a law corporation duly organized and existing under the laws of the State  
26 of California, authorized to and conducts business within the County of Santa Clara and State of  
27 California and maintains a principal place of business located at 440 North First St., Suite. 100, San  
28 Jose, CA 95112.

2. Plaintiff is informed and believes and thereon alleges that TELEPATH  
CORPORATION (hereinafter "TELEPATH", "Telepath", "Defendant", or "defendant") is a  
California corporation whose current business address is 49111 Milmont Dr., Fremont, CA 94538.

COMPLAINT FOR BREACH OF CONTRACT; ACCOUNT STATED; OPEN BOOK ACCOUNT; MONEY HAD AND RECEIVED; AND  
QUANTUM MERIT

1 Pamela Nguyen is Defendant's agent for service process with an address of 512 Bradley Ave., San  
2 Jose, CA 95128. At relevant times Jo Jo Tran was Defendant's Chief Executive Officer ("CEO") and  
3 Pamela Nguyen was Defendant's President and Chief Operating Officer ("COO").

4 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
5 Does one through 20, inclusive, and therefore sues said defendants by such fictitious names.  
6 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

7 4. Plaintiff is informed and believes and thereon alleges, that each fictitiously named  
8 Defendant is intentionally, negligently, contractually, vicariously, or in some other manner  
9 responsible for the occurrences herein alleged and that the Plaintiff's damages are proximately  
10 caused by said defendants.

## 11 II. VENUE/JURISDICTION

12 5. Jurisdiction is proper pursuant to CCP §410.10.

13 6. This Court is the proper venue to hear this matter pursuant to CCP §§395, 395.2 and  
14 395.5.

## 15 III. GENERAL ALLEGATIONS

16 7. CGS was retained by Defendant to represent them, primarily but not exclusively in  
17 relationship to In re Telepath Corporation, U.S.B.C. (ND CA) #03-56788 ("Bankruptcy Case"). On  
18 November 12, 2008, Defendant executed an Attorney-Client Fee Contract dated October 31, 2008.  
19 On December 11, 2008 the Bankruptcy Court orally approved the employment of Plaintiff as counsel  
20 for Defendant. On January 5, 2009 the Bankruptcy Court entered an Order Granting Application to  
21 Employ Counsel (Docket#365).

22 8. On March 11, 2011 the Bankruptcy Court in the Bankruptcy Case issued a  
23 Memorandum Decision on Campeau Goodsell Smith Final Fee Application (Docket#486) wherein it  
24 awarded Plaintiff \$38,060.97 in attorney's fees and \$584.49 in costs. Plaintiff was paid, pursuant to a  
25 retainer, \$20,000 leaving an outstanding balance of approximately \$18,645.46 relative this  
26 outstanding balance. Said balance is part of Defendant Confirmed Chapter 11 Plan (Docket#397,  
27  
28

1 March 30, 2009)<sup>1</sup>.

2 9. Between approximately April 2009 and April 2012 Plaintiff provided additional legal  
3 services and advanced and/or incurred costs and expenses on behalf of and for the benefit of  
4 Defendant in various other matters, including but not limited to post confirmation matters, claim  
5 objection litigation and trial, stock sale, and contempt and conversion (generally referred to as Client  
6 Matters 4025.02-06). Plaintiff provided Defendant with detailed statements of account for legal  
7 services and costs incurred and advanced. Plaintiff's statements were sent to Defendant's address as  
8 provided by Defendant. Plaintiff maintained detailed invoices or statements showing amounts due  
9 and amounts paid between Plaintiff and Defendants; the detailed invoices or statements maintained  
10 by Plaintiff were entered in the normal course of Plaintiff's business; the invoices or statements are  
11 and were maintained in a reasonably permanent manner; these additional services and costs totaled  
12 \$72,713.50 and Defendants have not paid the total sums due. Defendant last made payments on April  
13 30, 2012.

14 10. As of April 30, 2012, Defendants owed Plaintiff the outstanding principal sum of  
15 \$91,358.96. Statutory and contractual pre-judgment interest accrues at 10% per annum or  
16 \$9,135.90/year or approximately \$25.03/day. As of March 19, 2014, the total amount owing,  
17 exclusive of attorneys fees and costs, is \$108,579.60, consisting of \$91,358.96 of principal and  
18 \$17,220.64 of interest (\$25.03/day x 688 days (May 1, 2012-March 19, 2014)).

19 11. On December 29, 2011, Plaintiff sent, via U.S. Mail, Defendant a Notice of Client's  
20 Right to Arbitration pursuant to California Business and Professional Code Section 6200 et seq.

21 12. Intentionally Blank.

22 **IV. FIRST CAUSE OF ACTION**  
23 **BREACH OF CONTRACT**

24 13. Plaintiff incorporates by reference and realleges herein paragraphs 1 through 12,  
25 inclusive.

26 14. By reason of the foregoing, and as direct and proximate result, Defendants, and each  
27

28 <sup>1</sup>On March 19, 2013 the Bankruptcy Court in the Bankruptcy Case entered a Final  
Decree (Docket#549).

1 of them, have breached the agreement for which Plaintiff is entitled to damages in the principal sum  
2 of \$91,358.96. Statutory and contractual pre-judgment interest accrues at 10% per annum or  
3 \$9,135.90/year or approximately \$25.03/day. As of March 19, 2014, the total amount owing,  
4 exclusive of attorneys fees and costs, is \$108,579.60, consisting of \$91,358.96 of principal and  
5 \$17,220.64 of interest (\$25.03/day x 688 days (May 1, 2012-March 19, 2014)).

6 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

7 **V. SECOND CAUSE OF ACTION**  
8 **ACCOUNT STATED, C.C.P. 344, et seq.**

9 15. Plaintiff incorporates by reference and realleges herein paragraphs 1 through 14,  
10 inclusive.

11 16. Plaintiff has stated to Defendants in writing that they have and continue to have an  
12 account with Plaintiff in the damages in the principal sum of \$91,358.96. Statutory and contractual  
13 pre-judgment interest accrues at 10% per annum or \$9,135.90/year or approximately \$25.03/day. As  
14 of March 19, 2014, the total amount owing, exclusive of attorneys fees and costs, is \$108,579.60,  
15 consisting of \$91,358.96 of principal and \$17,220.64 of interest (\$25.03/day x 688 days (May 1,  
16 2012-March 19, 2014)).

17 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

18 **VI. THIRD CAUSE OF ACTION**  
19 **OPEN BOOK ACCOUNT, C.C.P. 337, et seq.**

20 17. Plaintiff incorporates by reference and realleges herein paragraphs 1 through 16,  
21 inclusive.

22 18. Plaintiff and Defendants, and each of them, maintain an open book account whereby  
23 Defendant, and each of them, owe Plaintiff the damages in the principal sum of \$91,358.96.  
24 Statutory and contractual pre-judgment interest accrues at 10% per annum or \$9,135.90/year or  
25 approximately \$25.03/day. As of March 19, 2014, the total amount owing, exclusive of attorneys  
26 fees and costs, is \$108,579.60, consisting of \$91,358.96 of principal and \$17,220.64 of interest  
27 (\$25.03/day x 688 days (May 1, 2012-March 19, 2014)).

28 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

COMPLAINT FOR BREACH OF CONTRACT; ACCOUNT STATED; OPEN BOOK ACCOUNT; MONEY HAD AND RECEIVED; AND  
QUANTUM MERIT

VII. FIFTH CAUSE OF ACTION

MONEY HAD AND RECEIVED/Common Counts (Quantum Meruit)

19. Plaintiff incorporates by reference and realleges herein paragraphs 1 through 18, inclusive.

20. Defendants, and each of them, are the beneficiaries and recipients, of money, and services from Plaintiff by way of wrongful means and without due consideration to Plaintiff. Defendants, and each of them, received said benefits and Plaintiff is entitled to compensation in the principal sum of \$91,358.96. Statutory and contractual pre-judgment interest accrues at 10% per annum or \$9,135.90/year or approximately \$25.03/day. As of March 19, 2014, the total amount owing, exclusive of attorneys fees and costs, is \$108,579.60, consisting of \$91,358.96 of principal and \$17,220.64 of interest (\$25.03/day x 688 days (May 1, 2012-March 19, 2014)).

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

VIII. PRAYER

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For special or economic damages in the principal sum of \$91,358.96.
2. For prejudgment interest at ten percent (10%) pursuant to Civil Code Sections 3287 & 3289 through the date of this action was commenced and at from the date of this complaint through the date of judgment (statutory pre-judgment interest accrues at 10% per annum or \$9,135.90/year or approximately \$225.03/day) or \$17,220.64 (\$25.03/day x 688 days (May 1, 2012-March 19, 2014));
3. For attorneys' fees pursuant to contract and statute Civil Code Section 1717 on all causes of action and/or 1717.5 for the Third Cause of Action;
4. For costs of suit; and
5. For such other and further relief as the court may deem just and proper.

DATED: March 19, 2014

CAMPEAU GOODSELL SMITH

By: \_\_\_\_\_

William J. Healy  
Attorneys for Plaintiff

COMPLAINT FOR BREACH OF CONTRACT; ACCOUNT STATED; OPEN BOOK ACCOUNT; MONEY HAD AND RECEIVED; AND QUANTUM MERUIT